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10/077,372	02/15/2002	David Wesley Smith	2001P09661 US01	3678

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EXAMINER

TO, JENNIFER N

ART UNIT	PAPER NUMBER
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2195

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/077,372

Applicant(s)

SMITH, DAVID WESLEY

Examiner

Jennifer N. To

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                                                                |                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                                                               | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                                           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/04/05, 03/08/04, 2/15/02</u> | 6) <input type="checkbox"/> Other: _____                                                |

### **DETAILED ACTION**

1. Claims 1-22 are presented for examination.
2. It is noted that although the present application does contain line numbers in the specification and claims, the line number in the claims do not correspond to the preferred format. The preferred format is to number each line of every claim, with each claim beginning with line 1. For ease of reference by both the Examiner and Applicant all future correspondence should include the recommended line numbering.

### ***Claim Objections***

3. Claim 18 is objected to because of the following informalities: line 2, missing “.”. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

6. Claims 1-18 are directed to method steps in which can be practiced mentally in conjunction with pen and paper, therefore they are directed to non-statutory subject matter. Specifically, as claimed, it is uncertain what performs each of the claimed

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method steps. Moreover, each of the claimed steps, inter alia, (maintaining, employing, allocating) can be practiced mentally in conjunction with pen and paper that is not tied to a technological art, environment, or machine which would result in a practical application producing a concrete, useful, tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. Therefore, the claimed invention is directed to non-statutory subject matter. The claims should be amended to indicate a computer implements the subject matter. (i.e. a computer implemented method).

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter in which the applicant regards as his invention.

8. Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. The following terms lack proper antecedent basis:

- i. data elements – claim 8;

- b. The claim language in the following claims is not clearly understood:

- i. as per claim 1, lines 1-3, it is uncertain what is “comprising the step of” (i.e. said method comprising the step of). Line 4, it is unclear when is the step of perform maintaining records happened (i.e. during a time interval could be at the beginning, the middle, or at the end). Line 10, it is not clearly understood what is meant by

“proportionate usage” (i.e. based on what criteria or standard). Line 10, it is uncertain whether “said program” refers to “an executable program” in line 8 (if they are the same, then the same name should be used “said executable program” throughout the claim). Line 14, it is not clearly understood what “particular user” refers to (i.e. the users that invoke an individual applications). Line 15, it is not clearly understood what is meant by “a predetermined events” (i.e. access request, termination of user operation).

- ii. as per claims 2, and 13, it is uncertain whether “said program” refers to “an executable program” of claim 1, line 8, or claim 12 .
- iii. as per claims 4, and 5, it is uncertain whether “said step of compiling data” refers to “intermittently compiling data” (if they are the same, then the same term should be used “said step of intermittently compiling data” throughout the claims).
- iv. as per claims 4, 6-7, 10-11, 15-19, and 22, the term “one of” should be referring with “or” not “and” as presenting in the claims.
- v. as per claim 11, it has the same deficiency as claim 1. Correction is required.
- vi. as per claim 19, it is not clearly understood how “a user interface system” could “comprising the steps of” (i.e. is this system claim or method claim).

- vii. as per claim 20, it is not clearly understood how "a method" of claim 20 is depending on the system claim 19.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over AIX Version 3.2 (hereafter AIX) ("AIX Version 3.2 – System Management Guide: Operating System And Devices, Chapter 14 System Accounting", published October 1<sup>st</sup> 1993).

11. AIX was cited by applicant in Information Disclosure Statement filed March 10<sup>th</sup>, 2004.

12. As per claim 1, AIX teaches the invention substantially as claimed including in a system supporting shared access to a plurality of concurrently operating applications by multiple users associated with one or more entities (page 14-1, Accounting Overview, lines 5-7), a method for monitoring individual application utilization (page 14-1, System Accounting, lines 1-2), comprising the steps of:

during a time interval (page 14-1, Processing Accounting, line 8),

maintaining a first record of different users associated with an entity (page 14-2, Connecting-Time Accounting, lines 1-5);

maintaining a second record of different applications invoked by at least one of said different users (page 14-2, Process Accounting, lines1-2);

maintaining a third record of use of an executable program employed by said different applications invoked by said at least one different user (page 14-2, Process Accounting, lines1-5); and

employing said first, second and third records for intermittently compiling data identifying operation usage characteristics of individual applications of said different applications by particular users associated with said entity in response to a predetermined event (page 14-1, Collecting and Reporting System Data, lines 9-17; page 14-2, Disk-Usage Accounting, lines 1-11).

AIX did not specifically teach said record of use supporting allocation of proportionate usage of said program between said different applications.

13. However, AIX disclosed process accounting data also provides information that one can use to monitor system resources usage (proportionate usage of said program) (page 14-3, Process Accounting Report, lines 6-9).

14. It would have been obvious to one of an ordinary skill in the art at the time the invention was made to have recognized that by providing information use to monitor

system resources, one would be motivated to efficiently allocating resources between different processes as needed by using the information provided. Therefore, it is leading to optimizing system resources to the fullest utilization.

15. As per claim 2, AIX teaches the step of allocating usage of said program between said different applications by determining an estimate of relative duration of use of said program by individual applications of said different applications (page 14-3, Process Accounting Report, line 8 through page 14-4, lines 1-4).

16. As per claim 3, AIX teaches the step of determining and recording weighting factors associated with individual applications of said different applications (page 14-3, Process Accounting Report, lines 6-8 through page 14-4, lines 1-2), said weighting factors representing an estimate of relative duration of use of said program by individual applications of said different applications (page 14-4, Processing Accounting Report, lines 2-10).

17. As per claim 4, AIX teaches wherein said step of compiling data comprises compiling data identifying at least one of, (a) processor time used by an individual application, (b) a number of file accesses made by an individual application, and (c) a number of storage access requests made by an individual application (page 14-2, Disk-Usage Accounting, lines 1-11).



18. As per claim 5, AIX teaches wherein said step of compiling data comprises compiling data supporting identifying relative operation usage characteristics by an individual application as a proportion of said different applications (page 14-2, Disk-Usage Accounting, lines 1-12).

19. As per claim 6, AIX teaches wherein said predetermined event comprises at least one of, (a) a data access request, (b) a storage access request, (c) termination of use of an individual application, (d) termination of a user operation session and (e) a periodically generated command (page 14-1, Collecting and Reporting System Data, lines 10-13; page 14-2, Disk-Usage Accounting, lines 10-11).

20. As per claim 7, AIX teaches step of maintaining a fourth record associating a processing device with at least one of, (a) a user, (b) an entity and (c) an individual application (page 14-2, Process Accounting, lines 1-7).

21. As per claim 8, AIX teaches wherein data elements of said second and third records are dynamically created during a session of operation (page 14-1, Collecting and Reporting System Data, lines 1-9).

22. As per claim 9, AIX teaches wherein said executable program employed by said different applications comprises a program providing a function shared by said different applications (page 14-2, Connect-Time Accounting, lines 1-11).

23. As per claim 10, AIX teaches wherein said entity comprises at least one of, (a) a customer, (b) a company, (c) an organization and (d) an identifiable group of users (page 14-1, System Accounting, lines 1-2).

24. As per claim 11, this claim is a method claim that corresponds to method claims 1, and 4. Therefore, this claim is rejected with the same reason as method claims 1, and 4 above.

25. As per claim 12, AIX teaches the step of maintaining a fourth record for use in allocating proportionate usage to an individual application of an executable program shared by a plurality of said different applications (page 14-2, Process Accounting, lines 1-11).

26. As per claim 13, AIX teaches the step of allocating proportionate usage of said program between said plurality of said different applications by determining an estimate of relative duration of use of said program by individual applications of said different applications (page 14-3, Process Accounting Reports, line 8 through page 14-4, lines 1-4).

27. As per claim 14, AIX teaches wherein said step of maintaining a third record includes maintaining a third record associating said processing device with said entity (page 14-3, Process Accounting Report, lines 1-5).

28. As per claim 15, AIX teaches wherein said first, second and third records are maintained in at least one of, (a) a single file and (b) a plurality of files (page 14-2, Accounting Overview, lines 5; Collecting and Reporting System Data, lines 9, 16-17).

29. As per claim 16, AIX teaches wherein said step of intermittently compiling data comprises intermittently compiling data identifying at least one of, (a) size of storage employed by an individual application, (b) a number of input/output requests made by an individual application, (c) a number of file deletion requests made by an individual application and (d) storage size employed for user data (page 14-2, Disk-Usage Accounting, lines 1-11).

30. As per claim 17, this claim is a method claim that corresponds to method claims 1, and 4. Therefore, this claim is rejected with the same reason as method claims 1, and 4 above. In addition, AIX teaches generating a record based on said compiled data (page 14-4, Daily Report, lines 9-10).

31. As per claim 18, AIX teaches wherein said step of generating a record comprises generating a record for use in at least one of, (a) billing an entity for usage of processing

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resources, (b) tracking system performance and (c) adaptively adjusting system characteristics to improve system performance (page 14-1, Account Overview, lines 1-4).

32. As per claim 19, AIX teaches the invention substantially as claimed including the steps of:

user entering a keyboard command for selecting display of image data representing processor utilization collated by individual application for a plurality of concurrently operating applications ( page 14-2, Process Accounting, lines 1-11; page 14-6, Keyboard Commands, lines 1-5); and

in response to user commands (page 14-6, Keyboard Commands, line 1),

display of compiled data identifying at least one of, (a) processor time used by an individual application, (b) a number of file accesses made by an individual application, and (c) a number of storage access requests made by an individual application of said plurality of concurrently operating applications (page 14-6, Keyboard Commands, lines 1-31).

AIX did not specifically teach initiating display of a first image including a user selectable item, initiating display of a second image.

33. However, AIX disclosed corresponding to user keyboard command, a display image (process accounting, connection-time, information about previous log in, a session record) is initializing (page 14-6, Keyboard commands, lines 1-31).

34. It would have been obvious to one of an ordinary skill in the art at the time the invention was made to have improved AIX's system by initializing display image wherein a user can look and select an item to further display other information instead of user have to type in a command for display image. Therefore, it would providing more user friendly and flexibility to AIX's system.

35. As per claim 20, AIX teaches the step of deriving said compiled data by intermittently generating data identifying operation usage characteristics of individual applications of said plurality of concurrently operating applications based on accumulated operation data records, said operation usage characteristics being collated for individual users associated with an entity (page 14-2, Disk-Usage Accounting, lines 1-12).

36. As per claim 21, this claim is a system claim that corresponds to method claim 1. Therefore, this claim is rejected with the same reason as method claim 1 above.

37. As per claim 22, this claim is a system claim that corresponds to method claims 1, and 4. Therefore, this claim is rejected with the same reason as method claims 1, and 4 above.

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**Conclusion**

38. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer N. To whose telephone number is (571) 272-7212. The examiner can normally be reached on M-T 7AM- 4:30 PM, F 7AM- 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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